

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LINDA M. CHRISTY and U.S. POSTAL SERVICE,
POST OFFICE, Springdale, AR

*Docket No. 03-187; Submitted on the Record;
Issued July 1, 2003*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has met her burden of proof in establishing that she sustained an injury to her elbow in the performance of duty.

On April 3, 2002 appellant, then a 50-year-old distribution clerk, filed a notice of occupational disease and claim for compensation, Form CA-2, alleging that on approximately October 1, 2001 she realized that her elbow tendinitis and right shoulder bursitis were causally related to her federal employment. On the reverse of the form, appellant's supervisor indicated that appellant stopped work on April 5, 2002.

Evidence accompanying the claim consisted of an undated personal statement in which appellant explains how she feels her work duties contributed to her elbow and shoulder conditions.

In a letter dated May 31, 2002, the Office of Workers' Compensation Programs advised appellant that the information submitted in her claim was insufficient to determine whether she was eligible for benefits under the Federal Employees' Compensation Act.¹ The Office advised appellant of the additional medical and factual evidence needed to support her claim. In particular, appellant was directed to provide a comprehensive medical report from her treating physician.

In response to the Office's letter, appellant submitted a narrative report, in which she described again how she felt her work duties caused her elbow and shoulder conditions. She also forwarded three reports signed by Dr. Tom Patrick Coker, a Board-certified orthopedic surgeon. These reports, dated December 10, 2001, January 9 and April 2, 2002, diagnosed appellant's condition as right lateral epicondylitis. Finally, appellant forwarded a copy of a bill for services provided by Dr. Coker.

¹ 5 U.S.C. §§ 8101-8193.

By decision dated July 16, 2002, the Office denied appellant's claim. The Office found that the medical evidence was insufficient to establish that appellant's elbow and shoulder conditions were caused by employment factors.

The Board finds that appellant has not met her burden of proof in establishing that she sustained an injury in the performance of duty.

An employee seeking benefits under the Act has the burden of establishing the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.² These are essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.

In the instant case, appellant has attributed her elbow and shoulder conditions to factors of her job as a distribution clerk in the course of her federal employment; however, there is insufficient evidence to establish that her elbow and shoulder conditions are due to factors of her employment. The December 10, 2001 report from Dr. Coker diagnosed appellant's condition as right lateral epicondylitis. The subsequent reports corroborated the diagnosis; however, Dr. Coker did not provide a medical opinion as to how appellant's condition was caused or aggravated by her work activities.

As noted above, part of the burden of proof includes the submission of medical evidence establishing that the claimed condition is causally related to employment factors. As appellant has not submitted such evidence prior to the Office's decision, she has not met her burden of proof in establishing her claim.⁴

² *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *Daniel J. Overfield*, 42 ECAB 718, 721 (1991); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁴ The record contains two letter reports from Dr. Coker received after the Office's July 16, 2002 decision. The Board's jurisdiction is limited to evidence which was before the Office at the time it rendered the final decision. Inasmuch as this evidence was not considered by the Office, it cannot be considered on review by the Board. 20 C.F.R. § 501.2(c). This decision does not preclude appellant from submitting such evidence to the Office as part of a reconsideration request.

The decision of the Office of Workers' Compensation Programs dated July 16, 2002 is hereby affirmed.

Dated, Washington, DC
July 1, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member